Majlis Amanah Rakyat & Anor v Mat Nawi bin Awang and another appeal

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NOS D-02(IM)-2015–12 OF 2015 AND D-03(IM)-1–01 OF 2016
ABANG ISKANDAR, ZAMANI A RAHIM AND ZALEHA YUSOF JJCA
11 NOVEMBER 2016

C

Civil Procedure — Appeal — Assessment of damages — Respondent obtained judgment in default of defence against appellants — Assessment of damages conducted by deputy registrar — Deputy registrar awarded damages in favour of respondent — Award affirmed by learned judicial commissioner — Whether sum awarded by High Court for loss of profit reasonable — Whether damages for loss of reputation, exemplary damages and aggravated damages should be awarded to respondent — Whether amount sought by respondent excessive — Whether amount ordered by High Court insufficient

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The appellants had commenced a bankruptcy action against the respondent and obtained adjudication and receiving order against the respondent. The respondent contended that the said bankruptcy action was void and thus commenced an action to claim for damages. The respondent managed to obtained judgment in default of defence for his claim on 1 December 2008. Pursuant to the said judgment, the deputy registrar in an assessment of damages proceedings had awarded damages in favour of the respondent. The said award by the deputy registrar was subsequently affirmed by the learned judicial commissioner ('JC'). Dissatisfied with the decision, the appellants vide encl 105 appealed against the decision of the High Court whereas the respondent vide encl 107 filed a cross-appeal on the inadequacy of the said award. The respondent submitted that the estimated net profit based on a 'Kertas Kerja' ('exh P2') was RM302,280, thus the award given by the High Court for loss of profit in the sum RM3,627,360 was reasonable. With regards to the respondent's claims for loss of reputation, exemplary damages and aggravated damages, the respondent sought to increase the award to RM500,000 for each of the said claim of damages. On the other hand, the appellants submitted that exh P2 was only estimation which nothing more than a mere speculation and the respondent had failed to prove actual loss.

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Held, allowing the appellants' appeal in part and allowing the respondent's cross-appeal:

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(1) By merely relying on exh P2 which was purely a mere estimation, speculation and assumption without proof of actual loss it would indeed be unsafe to allow the respondent's claim of RM3,627,360. As the

respondent could not prove his loss of earning as required by law, he was therefore entitled to nominal damages only. The court ordered that the loss of profit of the respondent be varied to a formula of RM22,150 x 2 x 6 = RM265,800 (see paras 13, 18 & 32).

(2) Based on the facts, the respondent's bankruptcy status was published and circulated in the public documents and his standing was badly tainted and tarnished for being adjudged a bankrupt. Further, the appellants' action and conduct against the respondent was unlawful and invalid. All the actions and conduct of the appellants had caused exemplary, aggravated damages and injury to the respondent's reputation. They provided ample basis for exemplary and aggravated damages to be awarded to the respondent. Nevertheless, the amount of damages sought by the respondent was excessive and the awards given by the learned JC were insufficient. The court therefore allowed the cross-appeal and enhanced the damages for loss of reputation, exemplary damages and aggravated damages as awarded by the High Court to RM100,000, RM50,000 and RM50,000 respectively (see paras 21, 23, 27 & 33).

[Bahasa Malaysia summary

Perayu-perayu telah memulakan tindakan kebankrapan terhadap responden dan mendapat perintah adjudikasi dan penerimaan terhadap responden. Responden menghujahkan bahawa tindakan kebankrapan tersebut terbatal dan dengan itu memulakan tindakan menuntut ganti rugi. Responden berjaya mendapat perintah ingkar memasukkan pembelaan bagi tuntutannya pada 1 Disember 2008. Berikutan perintah tersebut, timbalan pendaftar, dalam prosiding taksiran ganti rugi, mengawardkan ganti rugi berpihak pada responden. Award oleh timbalan pendaftar tersebut seterusnya disahkan oleh pesuruhjaya kehakiman ('PK'). Tidak berpuas hati dengan keputusan tersebut, perayu-perayu, melalui lampiran 105, merayu terhadap keputusan Mahkamah Tinggi manakala responden melalui lampiran 107, merayu balas terhadap ketidakcukupan award tersebut. Responden menghujahkan bahawa anggaran keuntungan berdasarkan kertas kerja ('eksh P2') adalah RM302,280, maka award yang diberi oleh Mahkamah Tinggi bagi kerugian keuntungan berjumlah RM3,627,360 adalah munasabah. Berkenaan tuntutan kerugian responden bagi reputasi, ganti rugi teladan dan teruk, responden memohon meningkatkan jumlah award menjadi RM500,000 bagi setiap satu tuntutan ganti rugi tersebut. Sebaliknya, perayu-perayu menghujahkan bahawa eksh P2 cuma anggaran yang tidak lebih daripada spekulasi dan responden gagal membuktikan kerugian sebenar.

Diputuskan, membenarkan sebahagian rayuan perayu dan membenarkan rayuan balas responden:

(1) Dengan sekadar bersandar pada eksh P2 yang cuma anggaran, spekulasi dan anggapan semata-mata tanpa bukti, adalah tidak selamat untuk

membenarkan tuntutan responden sebanyak RM3,627,360. Kerana responden gagal membuktikan kerugian pendapatannya seperti yang dikehendaki undang-undang, dia hanya berhak mendapat ganti rugi nominal sahaja. Mahkamah memerintahkan kehilangan keuntungan responden di variasi dengan formula RM22,150 x 2 x 6 = RM265,800 (lihat perenggan 13, 18 & 32).

(2) Berdasarkan fakta, status kebankrapan responden diterbitkan dan diedarkan dalam dokumen awam dan reputasinya tercemar teruk kerana diisytiharkan bankrap. Tambahan lagi, tindakan dan pelakuan perayu-perayu terhadap responden terbatal dan tidak sah. Semua tindakan dan pelakuan perayu-perayu telah menyebabkan kerugian teladan, teruk dan penjejasan reputasi responden. Mereka memperuntukkan banyak asas bagi ganti rugi teladan dan teruk untuk diawardkan kepada responden. Walau bagaimanapun, jumlah ganti rugi yang dipohon oleh responden melampau dan award yang diberi oleh PK tidak cukup. Oleh itu, mahkamah membenarkan rayuan balas dan menambah ganti rugi bagi kehilangan reputasi, ganti rugi teladan dan teruk seperti yang diawardkan oleh Mahkamah Tinggi, masing-masing menjadi RM100,000, RM50,000 dan RM50,000 (lihat perenggan 21, 23, 27 & 33).]

Notes

For cases on assessment of damages, see 2(1) *Mallal's Digest* (5th Ed, 2015) paras 1049–1057.

Cases referred to

Bank Bumiputra Malaysia Bhd Kuala Terengganu v Mae Perkayuan Sdn Bhd & Ors [1993] 2 MLJ 76; [1993] 2 CLJ 495, SC (refd)

Bank Muamalat Malaysia Bhd v Sophisticated Pipe Industry Production Sdn Bhd [2011] 9 CLJ 748, HC (refd)

Cassell & Co Ltd v Broome and another [1972] 1 All ER 801, HL (refd)

YB Dato' Paduka Husam Musa v YB Dato' Nozula Mat Diah & Ors (No 2) [2014] 1 LNS 1411, HC (refd)

Kamarulzaman bin Omar & Ors v Yakub bin Husin & Ors [2014] 2 MLJ 768; [2014] 1 CLJ 987, FC (refd)

Rookes v Barnard and others [1964] AC 1129, HL (refd)

Sime UEP Properties Bhd v Woon Nyoke Lin [2002] 3 CLJ 719, CA (refd)

Suzana bt Md Aris (claiming as administrator of the estate and a dependant of Mohd Anuar bin Sharip, deceased) v DSP Ishak bin Hussain & Ors [2011] 1 MLJ 107; [2011] 1 CLJ 226, HC (refd)

Legislation referred to

Defamation Act 1957 s 5

Rules of Court 2012 O 42 r 12, O 91

Appeal from: Civil Suit No 22–41 of 2008 (High Court, Kota Bharu)

Zakiah Mohammed (Nurhayati Juha and Nor Akmar Shamsuddin with her) (Akmar & Co) for the appellants.
Yusfarizal Yussoff (Wan Rohimi Wan Daud and Mohd Faizi Che Abu with him) (Tengku Amalin' A-Ishah Putri, Faizi & Wan Rohimi) for the respondent.

Zamani A Rahim JCA:

[1] This is an appeal by the appellants vide encl 105 against the decision of the High Court at Kota Bharu made on 23 November 2015 wherein the learned judicial commissioner ('JC') affirmed the award given by the deputy registrar in an assessment of damages proceedings. The respondent also filed a cross appeal vide encl 107 because the damages awarded to him were said to be inadequate.

[2] The judgment against the appellants was a judgment in default of defence recorded before Justice Mohd Azman bin Husin on 1 December 2008.

[3] The facts giving rise to a claim for damages are narrated by the learned JC in his judgment in Bahasa Malaysia at p 9 of *rekod rayuan tambahan* as follows:

> [6] Tuntutan Plaintif di dalam kes ini adalah berasaskan kausa tindakan konspirasi atau komplot untuk mencederakan Plaintif dan pakatan jahat atau pendakwaan niat jahat oleh Defendan-Defendan terhadap Plaintif;
>
> [7] Secara ringkasnya Plaintif telah mendakwa bahawa Defendan-Defendan secara salah telah menyebabkan Plaintif diisytiharkan sebagai seorang bankrap pada 28.8.1999. Akibat daripada status kebangkrapan tersebut, perniagaan Plaintif telah musnah sama sekali dan beberapa hartanah Plaintif juga telah turut dilelong;
>
> [8] Plaintif pada mulanya mendakwa tidak menyedari akan tindakan kebangkrapan yang telah diambil oleh Defendan-Defendan terhadapnya kerana tidak pernah diserahkan dengan apa-apa perintah Mahkamah, Notis Kebankrapan atau apa-apa Petisyen Pemiutang. Hanya pada 29.7.2003 Jabatan Insolvensi Malaysia Cawangan Kelantan telah memanggil Plaintif untuk menghadiri mesyuarat pemiutang kali pertama dan barulah Plaintif telah sedar akan tindakan yang curang dan berniat jahat telah dilakukan Defendan-Defendan yang telah secara salah menyebabkan Plaintif diisytiharkan bankrap;
>
> [9] Pada 10.7.2004 Plaintif telah membuat satu laporan polis memohon siasatan dijalankan pihak polis terhadap keseluruhan transaksi dan prosiding kebankrapan terhadapnya kerana mengesyaki wujudnya penipuan, konspirasi dan pendakwaan niat jahat (malicious prosecution) telah dilakukan Defendan-Defendan terhadap Plaintif;
>
> [10] Setelah siasatan polis dimulakan, Defendan Pertama dengan rela hati telah memfailkan satu Saman Dalam Kamar bertarikh 28.11.2004 untuk membatalkan Perintah Penerimaan dan Penghukuman (AO/RO) terhadap Plaintif dan

membebaskan Plaintif daripada belenggu kebankrapan yang telah dibawa secara salah terhadapnya selama lebih dari 5 tahun;

[11] Plaintif oleh itu telah memfailkan tindakan terhadap Defendan-Defendan pada sekitar tahun 2007. Pada 1.12.2008 Plaintif telah memperolehi Penghakiman Ingkar terhadap Defendan Pertama dan Kedua untuk perintah-perintah antara lainnya seperti berikut:

(a) Deklarasi bahawa tindakan kebankrapan, Petisyen Pemiutang dan juga Perintah Penerimaan dan Penghukuman (AO/RO) terhadap Plaintif adalah tidak sah dan terbatal;

(b) Gantirugi-gantirugi berikut untuk ditaksirkan:

(i) Gantirugi Kehilangan Pendapatan Perniagaan;

(ii) Gantirugi Kecederaan Reputasi dan Perniagaan;

(iii) Gantirugi Khas;

(iv) Gantirugi Teladan;

(v) Gantirugi Teruk (Aggravated)

(vi) Faedah dan Kos.

[4] The assessment of damages proceedings was heard before the deputy registrar and the award in favour of the respondent was given on 25 June 2015.

[5] Dissatisfied with the award made by the deputy registrar, the appellants filed an appeal to the judge in chambers who, on 23 November 2015, affirmed the order of the deputy registrar. The appellants were ordered to pay the respondent as follows:

(a) general damages for loss of profit in the sum of RM3,627,360;

(b) injury to reputation and business in the sum of RM50,000;

(c) exemplary damages in the sum of RM20,000;

(d) aggravated damages in the sum of RM20,000;

(e) interest at the rate of 8%pa on the whole amount of RM3,627,360 from the date of judgment until full settlement; and

(f) costs of proceedings of assessment of damages.

[6] Dissatisfied with the award of the High Court, the appellant filed an appeal in part to this court regarding his loss of profit in the sum of RM3,627,360 and payment of 8% interest on the total amount of RM3,627,360 from the date of filing the writ of summons on 17 March 2008 until full settlement.

[7] As the judgment against the appellants was a judgment in default of defence, it, therefore, follows that all the averments in the cause of action are merged in the judgment until it is set aside. The damages should therefore be assessed on the basis of the pleadings contained in the amended statement of claim: see *Kamarulzaman bin Omar & Ors v Yakub bin Husin & Ors* [2014] 2 MLJ 768; [2014] 1 CLJ 987.

[8] To prove his loss of profit, the respondent pleaded the 'Kertas Kerja', exh P2 in his amended statement of claim. In his application for a bank loan facility, the respondent had submitted the 'Kertas Kerja', exh P2 to the first appellant. Initially the first appellant approved a loan of RM100,000 to the respondent and subsequently agreed to increase the amount to RM150,000, thereby making a total amount of RM250,000. According to the respondent, during six months of his bankruptcy, an estimated net profit stated in exh P2 was RM302,280: see *Bank Bumiputra Malaysia Bhd Kuala Terengganu v Mae Perkayuan Sdn Bhd & Ors* [1993] 2 MLJ 76; [1993] 2 CLJ 495. Counsel for the respondent argued that the amount awarded for loss of profit in the sum of RM3,627,360 was reasonable.

[9] Learned counsel for the appellants argued that exh P2 was merely 'Kertas Cadangan' prepared by the respondent's friend and it was hearsay and inadmissible as the friend was not called to testify. At any rate, exh P2 is only an estimation which is nothing more than a mere speculation, conjecture and projection which is not a sufficient basis to prove loss of profits. The respondent had failed to prove the actual loss as no audited accounts had been tendered to support the claim. There was no supporting evidence to show how the figures in the said projection in exh P2 were arrived at. There was also no evidence shown as to the prospect of achieving the future projected income: see *Bank Muamalat Malaysia Bhd v Sophisticated Pipe Industry Production Sdn Bhd* [2011] 9 CLJ 748.

[10] The appellants also relied on the authority of *Sime UEP Properties Bhd v Woon Nyoke Lin* [2002] 3 CLJ 719 where this court observed that:

> ... in order to succeed in claims for damages for loss of profit one must establish the actual losses one would have suffered as a result of the breach. A projection as in this case is not sufficient to establish the would be losses of profit. A venture into a business would not necessarily mean that one can make a profit out of it because there are instances where people suffer losses. Not all business end-up with a profit. It is clear to us that the respondent failed to establish the expected losses as a result of the breach ...

[11] The appellants also disputed the estimation for every six months as stated in P2 for a period of six years from the year 1999 to the year 2005 (see *rekod rayuan Jld* 2, *Bahagian* C) which amounted to RM50,380 per month. Yet

with this so-called profit, learned counsel for the appellants argued that the respondent could not afford to settle his loan to the first appellant in the sum of RM96,057.05. Going by his profit margin (if true), the respondent should have been able to fully settle the loan with the first appellant within two to three months before the legal action was instituted against him.

[12] In his written submission, learned counsel for the appellants also argued that the learned JC had erred, inter alia:

> ... apabila gagal untuk melihat kepada data *Akaun Untung Rugi Responden bagi jangkamasa 6 bulan yang berakhir 30.1.1994* yang mencatatkan jumlah Untung Bersih sebanyak *RM22,150.00* (yang didakwa oleh Responden sebagai Untung Bersih sebenar) sebagai asas/basis pengiraan bagi kehilangan pendapatan Responden sekiranya benar iaitu sebanyak *RM22,150.00 (untuk tempoh 6 bulan) x 2 x 6 tahun = RM265,800.00.* Tiada sebarang bukti dokumen juga yang telah dikemukakan oleh Responden bagi menunjukkan bahawa beliau telah membayar cukai pendapatan kepada Lembaga Hasil Dalam Negeri bagi jumlah keuntungan sebanyak *RM265,800.00* sebagaimana yang didakwa telah diperolehinya tersebut (see Appeal Record, Jilid 2, Bahagian C).

[13] By merely relying on exh P2 which is purely a mere estimation, speculation and assumption without proof of actual loss it would indeed be unsafe to allow the respondent's claim of RM3,627,360. As the respondent could not prove his loss of earning as required by law, he was therefore entitled to nominal damages only.

[14] As regards the rate of interest at 8%pa from the date of filing the writ of summons on 17 March 2008 to date of full settlement was contrary to O 42 r 12 of the Rules of Court 2012. The proper interest should be at 5%pa from date of judgment to date of full settlement.

[15] The order of interest in the assessment of damages was premised on the judgment in default of defence recorded on 1 December 2008. Therefore O 42 r 12 of the Rules of Court 2012 is inapplicable as the Rules are enforceable on 1 August 2012 (except for O 91): see also Chief Justice Practice Direction Bil 1 Tahun 2012.

[16] It is a well-established principle that a court in assessing the quantum of damages to be awarded exercises a discretionary jurisdiction. It is mainly a matter of opinion or of impression that differences of calculation or assessment are to be expected. The quantification of damages cannot be assessed with precision or mathematical certainty.

[17] The bone of contention between the appellants and respondent was loss of profit as shown in exh P2. We are not prepared to hold that exh P2 is a

hearsay documentary evidence and thus, inadmissible. The exh P2 was prepared by the respondent with the aid of his friend. The respondent was the maker of exh P2 and was therefore admissible. Though admissible, exh P2 does not represent the actual profit of the respondent's business. The exh P2 was prepared by the respondent to support his bank loan application which he submitted to the appellants. The projected profit in exh P2 was said to be viable. Under the circumstances, it is reasonable to infer that the profit margin in exh P2 has been inflated for the purposes of supporting his bank loan application. Furthermore, exh P2 was prepared by the respondent who was an untrained financier and appraiser. As such P2 is unlike the project papers and feasibility study in exh D20 in the *Mae Perkayuan Sdn Bhd & Anor*, where exh D20 was prepared by Mohd Anuar & Co, who were financial and land consultants, housing developers and first class appraisers. These papers in exh D20, gave the details of the works to be carried out for purposes of the project, including construction costs, management costs, consultant's fees, legal fees, contractors profits etc.

[18] We, however, were inclined to agree with the submission for the appellants as alluded to in para 15 above that the actual loss of profit by the respondent is RM22,150 (for a period of six months). Thus, the actual loss suffered by the respondent is RM22,150 x 2 x 6 = RM265,800.

[19] There are three other heads of damages claimed by the respondent, namely (a) injury to reputation and business, (b) exemplary damages and (c) aggravated damages.

[20] The respondent had given evidence in the assessment of damages proceedings. The respondent is a successful bumiputra entrepreneur in the 'pembinaan badan lori' for over 23 years, the details of which are as follows:

(a) worked as a mechanic of Rahman Workshop from 1969–1971 (about three years);

(b) operated a workshop from 1972–1977 (about six years);

(c) a transportation agent of motor lorries from 1978–1982 (about five years);

(d) attended courses pertaining to the construction of bodies of motor lorries at Kuala Lumpur from 1983–1985 (about three years); and

(e) operated a workshop for the construction, repairs and modification of bodies of motor lorries from 1986–1991 (about six years).

[21] The respondent's bankruptcy status was published and circulated in the media or public documents, namely, exhs P11, P12, P13, P15, P16, P17, P18, P19, P20, P27, P28 and P29. The respondent's standing was badly tainted and

tarnished for being adjudged a bankrupt. The Defamation Act 1957 viewed defamation against a man's profession or business as very serious, which requires no proof of special damage: see s 5. In the case of *YB Dato' Paduka Husam Musa v YB Dato' Nozula Mat Diah & Ors (No 2)* [2014] 1 LNS 1411, the award allowed was RM350,000.

[22] The respondent prayed for an award of RM500,000 for loss of reputation and business.

[23] Secondly, the principles for an award of exemplary damages are demonstrated in *Rookes v Barnard and others* [1964] AC 1129 and *Cassell & Co Ltd v Broome and another* [1972] 1 All ER 801. In the present suit, the appellants' action and conduct against the respondent was very oppressive, outrageous and appalling. Their action was unlawful and invalid.

[24] Under this head (exemplary damages), the respondent prayed for an award of RM500,000.

[25] Thirdly, the award for aggravated damages has been succinctly stated in *Gatley on Libel & Slander* (11th Ed) Sweet & Maxwell at pp 282–283. There are two situations to assess aggravated damages, namely:

(a) the manner of committing the wrong may be such as to injure the plaintiff's proper feelings of dignity and pride; and

(b) the conduct calculated to deter the claimant (ie the respondent) from pursuing, continuing and persisting the claim by way of a prolonged or hostile cross-examination of the claimant (ie the respondent).

[26] In brief, the conduct of the appellants, commencing from the filing of bankruptcy proceedings, despite the respondent was a borrower-cum-chargor (ie secured borrower), a bankruptcy notice dated 15 July 1998 containing a false additional amount of RM50,000 which was calculated to result in profit to the appellants: see per Lord Devlin in *Rookes*. The fact that the respondent was said to surrender himself was false, the filing of creditors petition without disclosing that the respondent was also a chargor and instead the second appellant who was a 'Pengarah' of the first appellant sworn a false affidavit on 6 December 1998 which was filed in the High Court alleging that no security was charged to the appellants, caused the RO/AO to be recorded against the respondent, the filing of proof of debt to the Insolvency Department, the advertisement and *gazette* by the Insolvency Department and later annulled and notified the respondent's status as a bankrupt to all relevant agencies, to mention a few such as the respondent status as a bankrupt was *gazetted* and advertised in *The New Straits Times*, exh P27, publication of CTOS report, exh P28, publication proof of debt dated 19 August 2004, exh P15, minutes of

the creditors meeting dated 29 July 2003, exh P13, publication of the letters of Insolvency Department dated 16 February 2005 to various agencies such as the Bank Managers, CTOS, Persatuan Syarikat-Syarikat Kewangan Malaysia, Kelantan Credit Management, Telecom Malaysia, Tabung Haji and Amanah Saham Bhd etc, exhs P20 and P20A.

[27] The RO/AO against the respondent were rescinded and annulled, exh P19 when the police stepped in to conduct criminal investigation based on a police report lodged by the respondent alleging deceit, conspiracy and malicious prosecution by the appellants. All the actions and conduct of the appellants had caused exemplary, aggravated damages and injury to the respondent's reputation. They provided ample basis for exemplary and aggravated damages to be awarded to the respondent.

[28] Further, there had been continuous conduct of unabated appeals by the appellants against the judgment in default of defence which was obtained on 1 December 2008. Dissatisfied with the said judgment, the appellants had filed an appeal to this court vide Civil Appeal No D-01–7 of 2009, but it was dismissed on 12 July 2010. No appeal was filed to the Federal Court. However, the appellants were still unhappy and filed an Originating Summons No 24–329 of 2010 to set aside the judgment in default of defence entered on 1 December 2008. The originating summons, however, was ordered by Justice Azman bin Abdullah to be dismissed on 4 April 2011. Again, dissatisfied with the order dated 4 April 2011, the appellants had filed the appeal to this court vide Civil Appeal No D-01–275 of 2011. This court dismissed the appellants' appeal on 14 February 2013. The above indignant attitude shows the persistent and unrelenting behaviour of the appellants towards the respondent.

[29] As regard to quantum, the respondent relied on the case of *Suzana bt Md Aris (claiming as administrator of the estate and a dependant of Mohd Anuar bin Sharip, deceased) v DSP Ishak bin Hussain & Ors* [2011] 1 MLJ 107; [2011] 1 CLJ 226 where the sum of RM500,000 was awarded for aggravated damages.

[30] The respondent also prayed for a similar award of RM500,000 as aggravated damages.

[31] The appellants replied that the amounts of RM50,000 for loss of reputation and business, RM20,000 for exemplary damages and RM20,000 for aggravated damages, making a total of RM90,000 awarded by the deputy registrar was sufficient and reasonable. The appellants did not advance any appeal on the aforesaid heads of damages.

[32] Having perused the *rekod rayuan* and heard the submissions of both

parties, we agreed with learned counsel for the appellants that the actual loss of profit by the respondent was RM22,150 (for a period of six months in a year). We therefore, allowed the appellants' appeal in part, that is, the loss of profit of the respondent be varied to a formula of RM22,150 x 2 x 6 = *RM265,800*. We set aside the amount of RM3,627,360 awarded by the deputy registrar whose award was affirmed by the learned JC.

[33] We do not agree with the amount of damages suggested by learned counsel for the respondent in respect of injury to reputation, exemplary and aggravated damages. They are excessive. On the other hand, the awards of damages given by the learned JC are insufficient in the circumstances of this case and require our intervention. We, therefore, allow the cross appeal by the respondent on the following heads of damages:

(a) injury to reputation in the sum of RM50,000 is enhanced to *RM100,000*;

(b) exemplary damages in the sum of RM20,000 is enhanced to *RM50,000*; and

(c) aggravated damages in the sum of RM20,000 is enhanced to *RM50,000*.

[34] We had also ordered each party to bear their own costs in respect of this appeal. The deposit is to be refunded.

Appellants' appeal allowed in part; respondent's cross-appeal allowed.

Reported by Dzulqarnain Ab Fatar